

New Jersey Commerce & Economic Growth Commission

Office of Business Services

Development of Small Businesses and Women and Minority Businesses

Proposed Readoption With Amendments: N.J.A.C. 12A:9

Authorized By: William D. Watley, Chief Executive Officer and Secretary, New
Jersey Commerce & Economic Growth Commission

Authority: N.J.S.A. 52:27H-6, P.L. 1987, c.55 specifically section 9; 52:27C-71
(q); 52:27C-73(a), (f) and (h); and 52:27H-21.24.

Calendar Reference: See summary below for explanation of exception to
calendar requirement.

Proposal Number: PRN 2003-150

Submit comments by: July 4 ,2003 to:

Joseph T. Grossi, Director

Office of Business Services

New Jersey Commerce & Economic Growth Commission

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 12A:9, Development of Small Business and Women and Minority businesses, expires on November 18, 2003. The New Jersey Commerce & Economic Growth Commission has reviewed these rules, and including the following amendments, it has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The proposed amendments are technical in nature in that they replace references to the New Jersey Department of Commerce and Economic Development and the position of Commissioner with references to the New Jersey Commerce and Economic Growth Commission (Commerce Commission) and the position of Chief Executive Officer and Secretary (Secretary). The Department of Commerce and Economic Development, abolished by statute in 1998, was replaced by the Commerce and Economic Growth Commission. Slight changes to the designation of authority from "Department" to "Commission," and "Commissioner" to "Secretary" are permitted because in 1998, the Legislature

passed P.L. 1998, c. 44, Assembly No. 2159, which abolished the Department of Commerce and Economic Development and created the New Jersey Commerce and Economic Growth Commission. (See N.J.S.A. 52:27C-61 et seq.) The proposed technical amendments in N.J.A.C. 9-1.1;1.2; 1.3; 1.21(c), 1.22(d)2 and 1.23(d)2 delete the word "Commissioner" and replace it with "Chief Executive Officer and Secretary" and delete the words "Department of Commerce and Economic Development" and replace it with "Commerce and Economic Growth Commission" to accurately reflect the statutory change from the Department of Commerce and Economic Development to the Commerce and Economic Growth Commission. Language was added to 9-1.1(a) referencing the Commission's authority to promulgate rules. The Commerce Commission is allowing a 60 day comment period for this notice of proposal, therefore, the proposal falls under the to N.J.A.C 1:30-3.3 (a)5 exception to the requirement for calendar notice.

Chapter 9, Development of Small Businesses and Women and Minority Businesses, was adopted as R.1988 d.95, effective March 7, 1988. See: 19 N.J.R. 2377(b), 20 N.J.R. 534(a). The Executive Order No. 66(1978) expiration date for Chapter 9 was extended by gubernatorial waiver from March 7, 1993 to May 30, 1993. See: 25 N.J.R. 1335(c). Pursuant to Executive Order No. 66(1978), Chapter 9 was readopted as R. 1993 d.309, effective May 28, 1993. See: 25 N.J.R. 1752(a). 25 N.J.R. 2689(a).

Pursuant to Executive Order No. 66(1978), Chapter 9, Development of Small Businesses and Women and Minority Businesses, was readopted as R.1998 d.312, effective May 22, 1998. See: 30 N.J.R. 1399(a) and 2236 (a).

The rules were originally adopted effective March 7, 1988 (see 20 N.J.R. 534(a), and have not been amended since. The objective of the rules was then and continues to be the implementation of the Division of Development for Small Businesses, and Women and Minority Businesses Act, N.J.S.A. 52:27H-21.7 et seq. The purpose of the Act and these rules is to provide consolidated state services to small businesses and women and minority businesses.

Following is a summary of the provisions of each subchapter of the chapter proposed for readoption.

The scope of the Division's role in the New Jersey Commerce & Economic Growth Commission -- N.J.A.C. 12A:9-1.1; words and terms used in the rules -- N.J.A.C. 12A:9-1.2; the nature of the Division's services -- N.J.A.C. 12A:9-1.3; a loan referral and packaging program -- N.J.A.C. 12A:9-1.4; a listing of qualified professionals to provide services to small, women, and minority businesses -- N.J.A.C. 12A:9-1.5; Division internship programs with institutions of higher education -- N.J.A.C. 12A:9-1.6; market research and analysis projects -- N.J.A.C. 12A:9-1.7; advertising and marketing assistance -- N.J.A.C. 12A:9-1.8;

provision of training and information to eligible businesses on bidding for government contracts -- N.J.A.C. 12A:9-1.9; the Division's liaison role with other departments and agencies of State, Federal, and local government --- N.J.A.C. 12A:9-1.10; assistance in obtaining legal counsel for eligible business --N.J.A.C. 12A:9-1.11; financial analysis and accounting assistance -- N.J.A.C. 12A:12A9-1.12; assistance for eligible businesses in obtaining insurance -- N.J.A.C. 12A:9-1.13; assistance for eligible businesses in obtaining in arranging contracts with franchisees -- N.J.A.C. 12A:9-1.14; assistance in arranging for loan referral and packaging programs -- N.J.A.C. 12A:9-1.15; assistance in negotiating license agreements -- N.J.A.C. 12A:9-1.16; assistance for eligible businesses in procuring bonding -- N.J.A.C. 12A:9-1.17; referrals to private consultants, institutions and other providers of services at the request of eligible businesses -- N.J.A.C. 12A:9-1.18; assistance in finding sources of financing from government sources -- N.J.A.C. 12A:9-1.19; information about employee training and development programs -- N.J.A.C. 12A:9-1.20; centralization of information for eligible businesses in their dealings with Federal, State and local governments -- N.J.A.C. 12A:9-1.21; educational programs -- N.J.A.C. 12A:9-1.22; additional requirements addressing Uniform Certification by the Division -- N.J.A.C. 12A:9-1.23; and roles of the Small Business, Minority Business and Women Business Advisory Councils as they relate to the Division -- N.J.A.C. 12A:9-1.24.

Social Impact

The readoption of -- N.J.A.C. 12A:9 will provide for the continued effective implementation of the Division for Small Business and Women and Minority Business Act. Under Section 1 of the Act, “it is the public policy of this State to provide a source of technical assistance and financial assistance in order to encourage the establishment and growth of the small business and businesses owned by minorities and women.” The readoption of these rules will continue to facilitate achievement of this objective by defining the scope of services specified in the Act.

Economic Impact

The readoption of these rules will impact the State’s economy by offering continued assistance for small, women, and minority owned businesses. Ninety-eight percent of New Jersey companies employ fewer than 100 workers and more than one half of the New Jersey workers are employed by small businesses. The national census reports that seven out of every 10 jobs are created by small businesses. The continuation of these services is vital to the growth and stability of New Jersey’s economy.

Jobs Impact

The readoption of these rules will result in continued services provided by the Division of Development for Small Businesses and Women and Minority Businesses. These services enable small businesses and women and minority

businesses to grow their businesses and to maintain and to expand their employment.

Federal Standards Statement

There are no Federal standards or requirements applicable to the rules proposed for readoption with amendments. As a result, an explanation or analysis of the proposed amendments of these rules pursuant to Executive Order No. 27(1994) is not required.

Agriculture Industry Impact

The Commission anticipates that the proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

Since the readopted rules specify services to be provided by the Division to small businesses and women and minority businesses, the impact on small businesses will continue to be positive. No reporting, record keeping or other compliance requirements are imposed on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Smart Growth Impact

Any impact with respect to the achievement of smart growth and the implementation of the State Development and Redevelopment Plan would be a result of the participation of Small Businesses, Female Businesses and Minority Businesses on projects within designated smart growth areas.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:9.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

12A:9-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the [Department of Commerce and Economic Development] **Commerce and Economic Growth Commission** to implement P.L. 1987, ch. 55, an Act to establish within the [Department of Commerce and Economic Development] **Commerce and Economic Growth Commission** a Division of Development for Small Businesses and Women and Minority Businesses. These administrative rules are promulgated pursuant to the Commission's authority under N.J.S.A. 52:27C-71 (q); -52:27C-73(a), (f) and (h); N.J.S.A. 52:27H-21.24 and -52:14B-1 et seq.

(b)-(d) (No change)

12A:9-1.2 Definitions

The words and terms used in this subchapter shall have the following meanings

unless the context clearly indicates otherwise:

"[Commissioner] **Secretary** " means the [Commissioner] **Chief Executive Officer and Secretary** of the [Department of Commerce and Economic Development] **Commerce and Economic Growth Commission**.

"[DCED] Commission " means the [Department of Commerce and Economic Development] **Commerce and Economic Growth Commission**.

"Small business" means a sole proprietorship, partnership, or corporation which is a size and type as defined by the [Commissioner] **Secretary**.

12A:9-1.3 Nature of Division service

The Division shall provide such services to small businesses, minority and women businesses as enumerated by the Act. Where specified, these services shall be subject to standards of Federal programs and be coordinated with the Authority. Services shall be limited in their scope to prevent the [Department] **Commission** from incurring adverse liability and to ensure that the services do not compete with those private businesses traditionally providing services to the enumerated businesses.

12A:9-1.21 Centralized information concerning laws and rules

(a)-(b) (No change)

(c) The Division shall not provide materials to eligible businesses relevant to pending State legislation except as provided for at the direction of the [Commissioner] **Secretary**.

12A:9-1.23 Uniform certification

(a)-(c) (No change)

(d) **The political subdivisions of the state shall certify the eligibility of minority and women businesses for the political subdivision's programs which require certification of the authority of ownership and control of a vendor or firm**

(d)(1) (No change)

2. The political subdivisions of the State may by specific assignment and agreement have the Division serve as its certifying authority pursuant to approval by the [Commissioner] **Secretary**.

(e) (No change)

(f) (No change)

